

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Bilateral Agreement Between United States
Postal Service and Posten Norge AS (MC2010-34)
Negotiated Service Agreement

Docket No. CP2011-69

ORDER CONCERNING
AN ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued September 7, 2011)

I. INTRODUCTION

The Postal Service seeks to add a specific agreement to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 established in Docket No. MC2010-34. For the reasons discussed below, the Commission approves the proposed agreement.

II. BACKGROUND

On August 18, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional Inbound Competitive Multi-Service

Agreements with Foreign Postal Operators 1 agreement.¹ The Notice concerns a bilateral agreement for inbound competitive services with Posten Norge AS (Norway Post Agreement) that the Postal Service seeks to add to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product and a functionally equivalent agreement, Koninklijke TNT Post BV and TNT Post Pakket-service Benelux BV (TNT Agreement). The Postal Service asserts that its filing demonstrates that the Norway Post Agreement fits within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10-3 originally filed in Docket Nos. MC2010-34 and CP2010-95. Notice at 2. Additionally, it contends that the Norway Post Agreement is functionally equivalent to the agreement filed in Docket No. CP2010-95. *Id.* at 3.

The Postal Service filed supporting materials including Governors' Decision No. 10-3, a redacted copy of the agreement and an application for non-public treatment of materials filed under seal.

The Postal Service filed the instant contract pursuant to 39 CFR 3015.5 and in accordance with Order No. 546. The parties intend for the agreement to become effective on October 1, 2011, and to remain in effect for 1 year with the option to renew it for an additional year. *Id.* at 2; Attachment 3 at 1.

The Postal Service asserts that the Norway Post Agreement and the TNT Agreement incorporate the same cost and market characteristics. *Id.* at 3. It states that the TNT Agreement includes similar terms and conditions, *e.g.*, is an agreement with a foreign postal operator and conforms to a common description. *Id.* Additionally, the Postal Service contends that the Norway Post Agreement is similar in cost characteristics with the TNT Agreement other than certain minor adjustments, such as

¹ Notice of United States Postal Service of Filing Additional Functionally Equivalent Agreement, August 18, 2011 (Notice); *see also* Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

expression of costs in different currencies, which are slight modifications that do not affect the agreement's functional equivalence. *Id.* It maintains that because of the limited changes, the cost characteristics are essentially the same as the TNT Agreement.

The Postal Service identifies specific terms that distinguish the instant agreement from the existing agreement. These distinctions include the term, products, services, applicable law, and dispute resolution methods. *Id.* at 3-4.

Despite some minor differences, the Postal Service asserts that the Norway Post Agreement is functionally equivalent to the TNT Agreement previously filed. *Id.* at 4.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 2; Attachment 1.

The Postal Service concludes that the Norway Post Agreement complies with 39 U.S.C. 3633 and is functionally equivalent to the TNT Agreement. Notice at 4. Therefore, it requests that the Commission add the Norway Post Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.*

In Order No. 822, the Commission gave notice of the docket, appointed a Public Representative, and provided the public with an opportunity to comment.²

III. COMMENTS

Comments were filed by the Public Representative.³ No other interested person submitted comments. The Public Representative reviews the Norway Post Agreement's

² Notice and Order Concerning Filing of an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, August 24, 2011 (Order No. 822).

³ Public Representative Comments on Postal Service Notice of Filing an Additional Negotiated Service Agreement for Inclusion within Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1, August 31, 2011 (PR Comments).

functional equivalence with the TNT Agreement in Docket No. CP2010-95 and compliance with 39 U.S.C. 3633(a). *Id.* at 2-3. He notes that the Norway Post Agreement originates from a different template but agrees with the Postal Service that the minor differences *e.g.*, dispute resolution methods, products and the term, are not significant enough to affect either cost or market characteristics or the primary function of the agreements. *Id.* The Public Representative concludes that the Norway Post Agreement complies with requirements of 39 U.S.C. 3633 for competitive negotiated service agreements. *Id.* at 3.

IV. COMMISSION ANALYSIS

The Postal Service proposes to add an additional agreement under the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. First, the Commission reviews the agreement to ensure that it is substantially equivalent to the agreement approved in Docket No. CP2010-95, and thus belongs as part of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. Second, the Commission must ensure that the agreement at issue in this proceeding satisfies the requirements of rules 3015.5 and 3015.7, and 39 U.S.C. 3633.

Functional equivalence. The Postal Service states that the Norway Post Agreement shares similar cost and market characteristics with the TNT Agreement. It asserts that the instant contract meets the pricing formula and classification established in Governors' Decision No. 10-3 which comport with 39 U.S.C. 3633 and the Commission's rules. The Postal Service also identifies differences between the Norway Post Agreement and the TNT Agreement. These distinctions include the term, products, applicable law, and dispute resolution process. Notice at 3-4.

The instant agreement appears to be similar to the agreement filed in Docket No. CP2010-95, although it differs in some minor respects relative to certain general terms. These differences notwithstanding, the Commission concludes that the instant contract may be included in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews competitive products to ensure that they meet the applicable requirements of rules 3015.5 and 3015.7, and 39 U.S.C. 3633. The Commission has reviewed the Notice, financial analyses provided under seal that accompanies the instant contract, as well as the comments filed in this proceeding. Regarding the latter, the Public Representative concludes, based on a review of the financial model, “that the negotiated rate for inbound Air Parcel Post set forth in the Norway Post Agreement will generate a positive unit contribution and a reasonable cost coverage.” PR Comments at 3.

Based on the information provided, the Commission finds that the contract submitted should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products’ contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, a preliminary review of the instant contract indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service’s Notice refers to the TNT Agreement as the “baseline” agreement for the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 3. The Commission accepts the Postal Service’s designation of the initial agreement as the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

The Postal Service states that the parties intend for October 1, 2011, to be the effective date of the Norway Post Agreement. If this date changes, the Postal Service shall notify the Commission of the effective date. The Postal Service shall promptly notify the Commission if the Norway Post Agreement terminates earlier than its proposed term, but no later than the actual termination date.

In addition, within 30 days of expiration, or early termination of the Norway Post Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the agreement.

In conclusion, the Commission finds that the agreement submitted in Docket No. CP2011-69 is appropriately included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

V. ORDERING PARAGRAPHS

It is ordered:

1. The agreement filed in Docket No. CP2011-69 is included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product (MC2010-34) product.
2. The Postal Service shall notify the Commission of the effective date of the instant agreement and update the Commission if the contract terminates prior to the scheduled termination date as discussed in this Order.
3. Within 30 days of expiration, or early termination of the Norway Post Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the agreement.

By the Commission.

Shoshana M. Grove
Secretary